IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7537 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIRASANGBHAI C. CHAUDHARI

Versus

TALUKA DEVELOPMENT OFFICER

Appearance:

MR BN PATEL for Petitioner

MR MA BUKHARI AGP for Respondent Nos. 1 to 4

MR KIRIT I PATEL for Respondent Nos. 5 & 6

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/08/2000

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution of India the petitioner challenges the order dated March 16, 1990/May 28, 1990 passed by the Additional Chief Secretary (Appeals),

Revenue Department, Government of Gujarat, by which he allowed the revision application filed by respondent No.5 herein.

2. The petitioner had applied to the Gram Panchayat for a plot of land at lumpsum price in the year 1981. The Gram Panchayat after inviting objections, recommended to the Taluka Development Officer for grant of the plot to the petitioner. The Taluka Development Officer after perusing the record and personal visit to the site for inspection and on satisfying about the validity of the recommendation for grant of plot admeasuring 105.50 sq.mts., vide order dated February 13, 1984 granted the plot in favour of the petitioner in consideration of Rs.848/- The petitioner thereafter applied for permission of construction to the Panchayat, which was granted vide order dated May 3, 1985. After obtaining permission from the Panchayat the petitioner started construction in accordance with the permission on the said plot.

3. The respondent No.5 preferred Appeal No.56/85 before the Assistant Collector, Patan against the grant of the plot in favour of the petitioner and the Assistant Collector vide order dated November 28, 1988 set aside the order by which the plot was granted in favour of the petitioner.

4. The petitioner aggrieved thereby preferred Appeal before the Collector, Mehsana bearing Appeal No. 44 of 1988. The said appeal was allowed by the Collector, Mehsana by setting aside the order recorded by the Assistant Collector, Patan and restored the order passed by the Taluka Development Officer by which the plot was granted to the petitioner.

5. The respondent No.5 carried the matter before the Additional Chief Secretary (Appeals), Revenue Department, Government of Gujarat, by filing Revision Application No.31/89. The Additional Chief Secretary (Appeals), Revenue Department, vide order dated March 16, 1990 allowed the revision by setting aside the order passed by the Collector and restored the order passed by the Assistant Collector, Patan and thereby cancelled the order passed by the Taluka Development Officer by which the plot was granted in favour of the petitioner.

6. Aggrieved by the aforesaid order passed by the Additional Chief Secretary (Appeals), Revenue Department, the petitioner has filed this petition contending that the order passed by the Additional Chief Secretary is contrary to law, against the material on record and

beyond jurisdiction and it has caused grave injustice to the petitioner and prayed to issue an appropriate writ order or direction quashing and setting aside the impugned order dated 16.3.90/29.5.90 passed by the Addl. Chief Secretary (Appeal) Revenue Department, Gujarat State, as per Ann. 'E' as illegal, null & void and to restore the order dated 27.6.89 passed by the respondent No.3 as per Annex. 'D'.

7. Though the respondent Nos.1 to 4 filed their appearance have chosen not to file affidavit in reply. However, respondent Nos.5 and 6 contested the petition by filing affidavit in reply.

8. Mr. B.N. Patel, learned advocate for the petitioner, contended that the order passed by the revisional authority is beyond the scope and jurisdiction under section 211 of the Bombay Land Revenue Code, 1879 ('the Code' for short hereinafter). It is also contended that the said order was passed in a casual manner and without proper application of kind. What is stressed by the learned advocate is that the plot granted to the petitioner is apparently not on the public road as per the map. However, the revisional authority has wrongly held that the said land is a part of the public way. It is also emphasized by the learned advocate that construction was almost over when the impugned order came to be recorded. He further contended that the order passed by the revisional authority is arbitrary, capricious, illegal and requires to be quashed and set aside and, therefore, he urged that the said order be quashed and set aside by allowing the petition.

9. Mr. M.A. Bukhari, learned A.G.P. supported the order passed by the revisional authority in exercise of powers under Section 211 of the Code. According to him, no illegality or irregularity has been committed by the revisional authority while recording the impugned order. He also contended that principles of natural justice have also not been violated. Therefore, he urged that the petition be rejected.

10. Mr. Kirit I. Patel, learned advocate for the respondent Nos.5 and 6, contended that the plot in question was granted by the Taluka Development Officer without following procedure and, therefore, it was rightly set aside by the Assistant Collector in exercise of powers under Section 203 of the Code. He further contended that the Collector has overlooked all the relevant aspects and reached to a wrong conclusion on surmises, assumptions and conjectures only on the ground

that construction on the plot in question was over and hence it was not proper to cancel the order whereby the plot was granted to the petitioner. It is also emphasized by the learned advocate that the finding of the Collector to the effect that the plot in question is not forming part of a public road is based on surmises, and assumptions. It is maintained that the revisional authority has very rightly considered all these aspects and ultimately held that the order recorded by the Collector was against the material on record and has rightly held that the plot in question is a part of the public road. It is emphatically contended that since the Taluka Development Officer had no right or authority to grant land to the petitioner, the revisional authority has very rightly cancelled the said order. He further contended that the impugned order cannot be lightly interferred with in a petition filed under Article 227 of the Constitution of India. He, therefore, urged that the petition may be rejected.

11. I have given my anxious considerate thought to the rival contentions of the parties. So far as the factual aspects with regard to grant of plot is concerned, there is no dispute. The question which falls for consideration of this Court is as to whether any error of jurisdiction committed by the Tribunal in recording impugned order and the nature and scope of judicial review in a petition filed under Article 227 of the Constitution.

12. To answer the aforesaid question it would be appropriate to refer to the order passed by the Assistant Collector wherein it was discussed that the Taluka Development Officer has granted the plot in favour of the petitioner without verifying as to whether public notice inviting objections from the public at large was issued or not. He also further observed that the plot in question was a part of the public road and, therefore, prior to passing any order granting the said plot in favour of the petitioner, the Taluka Development Officer ought to have obtained permission of the Collector as envisaged under the relevant provisions of law. Therefore, the Assistant Collector has set aside the order passed by the Taluka Development Officer granting the plot in favour of the petitioner.

13. The Collector set aside the order of the Assistant Collector on assumptions, conjectures and surmises. The Collector has observed in his judgment that on verifying the record it is seen that a public notice was issued. The Collector has further observed

that after lapse of long period it is not proper to cancel the order passed in favour of the petiioner by which the plot was granted to him since he has already constructed on the plot. So far as the question with regard to the plot granted to the petitioner is forming part of a public road is concerned, the Collector has observed that in the order passed by the Taluka Development Officer the said plot is not shown as forming part of the public road. From the above facts, it can be said that without verifying the record of the Government the Collector went on assumption and held that the said plot does not form part of the public road. What was weighed with the Collector was that since the construction was over it was improper to cancel the said grant of plot in favour of the petitioner.

14. The order recorded by the revisional authority, that is, Additional Chief Secretary (Appeals) Revenue Department, Government of Gujarat, deals with all the aspects in detail and he unequivocally held that the plot in question forms part of a public road and, therefore, without following procedure to delete the said plot form the public road it cannot be granted in favour of any person. In the said order it is also mentioned that the map prepared by the Circle Inspector was to be believed but the Collector on mere assumption and surmises held that the plot does not form part of the public road.

15. There is no manner of doubt that order recorded by Additional Chief Secretary (Appeals), Revenue Department, unequivocally suggests that it is not beyond the scope and jurisdiction under Section 211 of the Code in exercise of revisional jurisdiction and in view of findings recorded therein it is found that plot forms a part of public road.

16. Now the question which requires to be considered is as to whether before granting plot permission under Section 37 of the Code is required to be obtained. To answer the question it would be appropriate to refer to Section 37 of the Code which reads as under:

> "37. (1) All public roads, lanes and paths, the bridges, ditches, dikes, and fences, on or beside, the same, the bed of the sea and of harbours and creeks below high water-mark, and of rivers, streams, nallas, lakes, and tanks, and all canals, and water-courses, and all standing and flowing water and all lands wherever situated, which are not the property of individuals, or of aggregates of persons legally

> capable of holding property, and except in so far as any rights of such persons may be established, in or over the same, and except as may be otherwise provided in any law for the time being in force are and are hereby declared to be, with all rights, in or over the same, or appertaining thereto, the property of the Government, and it shall be lawful for the Collector subject to the orders of the State Government, to dispose of them in such manner as he may deem fit, or as may be authorized by general rules sanctioned by the Government concerned, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting."

In view of the aforesaid provisions, it is clear that all public roads, lanes and paths, the bridges, ditches, dikes and fences, etc., belong to the Collector and the Collector alone can dispose them of in such a manner as he may deem fit or as may be authorized by general rules sanctioned by the Government concerned, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting. Therefore, without obtaining prior permission of the Collector, the Taluka Development Officer has no authority to dispose of any land forming part of a public road.

17. In view of the foregoing discussion, I am of the opinion that no error either of law or fact has been committed by the Additional Chief Secretary (Appeals), Revenue Department while recording the impugned order.

18. It is settled proposition of law that jurisdiction of the High Court under Article 227 of the Constitution is very limited and confined itself only to correcting any error of jurisdiction committed by the Tribunal. It cannot assume suo motu jurisdiction of appellate Court and correct every mistake assumed to have been committed by the Tribunal. In this connection, it would be appropriate to refer to the decision in the case of Khanna Improvement Trust v. Land Acquisition Tribunal, (1995) 2 SCC 557, wherein the Supreme Court has held that the High Court must confine itself to correcting any error of jurisdiction committed by the Tribunal and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the Tribunal.

18. In the judgment rendered in the case of H.B. Gandhi v. Gopi Nath & Sons, 1992 Supp (2) SCC 312, the Supreme Court has held that it is a review of the

decision making process and not of the decision itself and hence the High Court cannot reappreciate the primary or perceptive facts found by the fact finding authority under statute.

19. In this connection, it would be appropriate to refer to the judgment of the Supreme Court in the case of Mohd. Yunus v. Mohd. Mustaqim, AIR 1984 SC 38 wherein the Supreme Court has held as under:

> "A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art. 227. The supervisory jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

20. Seen in the above context, there is no error of law or fact in recording the impugned order by the Additional Chief Secretary (Appeals), Revenue Department and in view of the law laid down by the Supreme Court in the aforesaid judgments with regard to the jurisdictional sweep of the High Court in exercise of powers under Articles 226/227 of the Constitution of India, I am of the opinion that the petition merits rejection.

21. For the foregoing reasons, the petition fails and accordingly it is rejected. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated. However, upon the request made by Mr. B.N. Patel, learned advocate for the petitioner, the interim relief shall continue to remain operative for a further period of eight weeks hereof to enable the petitioner to move higher forum.

4.8.2000. (A.M.Kapadia, J.)

(karan)